

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

FILED

SEP 27 2021

*Matthew F. Clark*  
CLERK

TRISTAN K EASTMAN,

Plaintiff,

vs.

PATRICIA ROTH, Psychotherapist;  
RANDY JORDAN, CEO; JULIA BARSE,  
Health Coordinator; UNKNOWN DR.  
HANSON, UNKNOWN RADIOLOGIST,

Defendants.

1:21-CV-01019-CBK

ORDER

Plaintiff filed a *pro se* complaint under 42 U.S.C. § 1983 alleging that his federal constitutional and statutory rights were violated six times in 2020 and 2021 when he was transported from the Roberts County, South Dakota, jail by Sisseton-Wahpeton tribal police officers to the Woodrow Wilson Keeble Health Care Center for medical care. Specifically, he claims defendants violated his right to privacy under the Constitution and the Health Insurance Portability and Accountability Act of 1996, when defendants, against plaintiff's express wishes, shared his personal health information with the tribal police officers who transported him to his appointments.

Plaintiff filed an application to proceed without the prepayment of the filing fee. Plaintiff has made the requisite showing under 28 U.S.C. § 1915. Plaintiff is an inmate in the custody of the Minnesota Department of Corrections at MCF-Faribault. Under the Prison Litigation Reform Act, "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). Plaintiff must pay the full \$350 filing fee notwithstanding whether or not the matter is subsequently dismissed as frivolous after review under 28 U.S.C. § 1915(e)(2).

A prisoner must pay, as an initial partial filing fee, 20% of the greater of the average monthly deposits to the prisoner's account or the average monthly balance of the prisoner's account for the last six months. 28 U.S.C. § 1915(b)(1)(A) and (B). The Court finds that plaintiff is required to make an initial partial filing fee of \$ 67.92.

The Prison Litigation Reform Act requires the Court to screen prisoner complaints and dismiss any complaint that is "(1) frivolous, malicious, or fails to state a claim upon which relief may be granted or (2) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b). I am required to give the plaintiff's pro se complaint liberal construction and identify any discernable cognizable claim. Solomon v. Petray, 795 F.3d 777, 787 (8th Cir. 2015).

Plaintiff filed a complaint and a subsequent motion to amend the complaint. Plaintiff has clarified in the proposed amended complaint the Constitutional Amendments upon which each claim against each defendant is based, as well as providing more complete address information as to each defendant. I find that the motion to amend the complaint should be granted.

I have conducted an initial review of the amended complaint as required by § 1915A. Plaintiff has alleged federal causes of action against the defendants. When a plaintiff is granted leave to file a federal complaint without prepayment of fees, the district court may order the service of process pursuant to 28 U.S.C. § 1915(d).

Based upon the foregoing,

IT IS ORDERED:

1. Plaintiff's application, Doc. 2, to proceed without the prepayment of the filing fee is granted.

2. Plaintiff shall pay an initial filing fee in the amount of \$67.92 to the Clerk of the U.S. District Court on or before October 25, 2021. Failure to do so may result in dismissal of this action.

3. Whenever the amount in plaintiff's trust account exceeds \$10.00, the institution having custody of the plaintiff is hereby directed to forward monthly payments that equal 20% of the funds credited the preceding month to the plaintiff's trust account to the U.S.



District Court Clerk's office pursuant to 28 U.S.C. § 1915(b)(2), until the \$350.00 filing fee is paid in full.

4. The Clerk of Court shall send a copy of this order to the appropriate official at plaintiff's institution.

5. The motion, Doc. 5, to amend the complaint is granted. The Clerk shall file that document at Doc. 5-1 as plaintiff's amended complaint.

6. Upon payment of the initial filing fee, the Clerk of Court shall provide plaintiff a separate summons and USM-285 form for each defendant. Plaintiff shall compete and return to the Clerk of Court a separate summons and USM-285 form for each defendant. Upon receipt of the completed summons and USM-285 forms, the Clerk of Court will issue the summonses.


7. The United States Marshals Service shall serve a copy of the summons and amended complaint upon the individual defendants pursuant to SDCL 15-6-4(d)(8). All costs of service shall be advanced by the United States.

8. In the event plaintiff makes a recovery under the complaint, plaintiff shall reimburse the government for any filing and service fees that have been advanced.

9. If the plaintiff fails to complete and return summons and the USM-285 forms as directed, this matter will be dismissed for failure to prosecute.

DATED this 25<sup>th</sup> day of September, 2021.

BY THE COURT:

  
CHARLES B. KORNMANN  
United States District Judge